

REMARKS

In response to the above identified Office Action, the Applicants submit the above amendments and respectfully request reconsideration in view of the remarks below. Claims 1, 4, 6, 7, 9-12, 14, 16, 17, 20, 22-24, 26 and 28 are amended. Accordingly, claims 1, 4, 6-12, 14, 16, 17, 20, 22-28 are pending in the application.

I. Rejections under 35 U.S.C. § 101

Claims 1, 4, 6-12, 14, 16, 17, 20, 22, 23, 26 and 28 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter.

In regard to claims 26 and 28, the Examiner has taken issue with the language “[a] computer-readable storage medium comprising data that when executed...” Specifically, the Examiner appears to be taking issue with the word “when.” The Examiner argues that “when the CD or floppy disk is not implemented in/or not being executed by a computer/processor, functionality of computer programs/data structure in the floppy disk/CD is not realized.” See page 6 of the Office Action. However, use of the term “when” in the claim specifies that the limitation is directed to the time when the computer readable storage medium is being accessed, thus excluding the time when it is not being executed. Thus, the Applicants do not understand the basis for the rejection of claims 26 and 28. Further, the Applicants note that use of language identical to or similar to that which is used in claims 26 and 28 has been thought acceptable in hundreds of issued patents. A quick search of the patent database for “a computer readable medium, which when executed,” which is analogous to that which is claimed, retrieved dozens of patents using the phrases in the claims a sampling of which includes 7328032, 7352110 and 7353128. Thus, the Applicants respectfully request the Examiner reconsider and withdraw the non-statutory subject matter of claims 26 and 28.

In regard to claims 1, 4, 6-12, 14, 16, 17, 20, 22 and 23, the Applicants have amended these claims to tie them to a particular machine by reciting that at least one element in each of the methods if performed by a processor. Accordingly, reconsideration and withdrawal of the non-statutory subject matter rejection of these claims are requested.

II. Rejections under 35 U.S.C. § 102 and 103

Claims 1, 4, 6-7, 14, 16, 17, 20, 22-26 and 28 have been rejected under 35 U.S.C. §102 or 35 U.S.C. § 103 based on U.S. Patent No. 6,172,677 issued to Stautner et al. (hereinafter “Stautner”) or a combination of Stautner and U.S. Patent No. 6,268,849 issued to Boyer et al. (hereinafter “Boyer”). In the response to the argument section of the Office Action, the Examiner has noted that the basis for the rejection using Stautner relies on the alternate use of the term “or” in each of the claims. The Applicants have removed the term “or” to require that both types of unique symbols are present in the listings. The Examiner has not identified any part of Stautner or Boyer that teaches the second type of unique symbol. Therefore, reconsideration and withdrawal of the anticipation and obviousness rejection of the claims are requested.

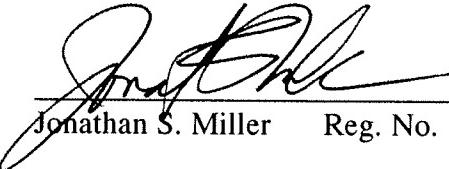
CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1, 4, 6-12, 14, 16, 17, 20, 22-28, patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 3/20, 2009

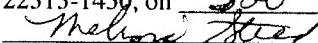


Jonathan S. Miller Reg. No. 48,534

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(310) 207-3800

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper is being transmitted online via EFS Web to the Patent and Trademark Office, Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450, on 3/20, 2009.


Melissa Stead 3/20, 2009